

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 96-179

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

As noted in the analysis to the rule, s. 86.303 (5) (f) (intro.) and (i) (intro.), Stats., require that a penalty be assessed if certain financial reports are submitted to the Department of Revenue within 30 days after the due date and that the penalty is based on each day that the report is past due. Section 86.303 (5), Stats., does not appear to provide a definition of “each day.” However, the general rule in Wisconsin is that, unless otherwise provided in the statutes, the time within which an act is to be done is computed by excluding the first day and including the last. If the last day to do an act falls on a Sunday or legal holiday, the act may be done on the next day that is not a Sunday or holiday. In addition, if the last day for filing documents with a state agency falls on a Saturday and the office is not open on a Saturday, then the filing may be done on the next day that is not a Sunday or legal holiday. [See s. 990.001 (4), Stats.] Thus, while it may be reasonable to exclude Saturdays, Sundays and legal holidays from the penalty computation when the 30-day filing period expires on one of those days, it does not appear reasonable to redefine “each day” for purposes of the penalty computation to exclude all of those days. In addition, as the Note to s. Trans 76.02 (2) points out, the Legislature uses terms such as “working day” when it means something other than each calendar day. Accordingly, the department’s statutory authority for the interpretation of “each day” as a “work day,” which excludes Saturdays, Sundays and legal holidays, should be carefully reviewed.

5. Clarity, Grammar, Punctuation and Use of Plain Language

The last sentence of s. Trans 76.03 is confusing and unclear. It appears that the intent of the sentence is to provide that the penalty is assessed based on the number of work days that the

report is past due. The sentence also appears to provide that the department considers the report filed on the date that it is postmarked or “submitted.” It might be helpful to create two separate sentences out of the last sentence. The first sentence could indicate that a report is filed when it is postmarked or submitted. However, the rule should better identify what it means to be “submitted.” The second sentence then could indicate that the 1% penalty applies to each work day from the due date to the filing date. Finally, in the first sentence of s. Trans 76.03, the phrase “counties or municipalities” should be changed to “counties and municipalities” and the phrase “or both” should be deleted.